

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:) BK. NO: 17-40101-BTR
)
)
GAINESVILLE HOSPITAL)
)
DISTRICT)
)
D E B T O R.)

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TRANSCRIPT OF PROCEEDINGS

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BE IT REMEMBERED, that on the 28th day of March, 2017,
before the HONORABLE BRENDA T. RHOADES, United States
Bankruptcy Judge at Plano, Texas, the above styled and
numbered cause came on for hearing, and the following
constitutes the transcript of such proceedings as hereinafter
set forth:

P R O C E E D I N G S

COURTROOM DEPUTY: Page 5, number 22,
Gainesville Hospital District. Case 17-40101. Two
applications to employ.

THE COURT: Okay. Appearances.

MR. GREENDYKE: Good afternoon, Judge. Bill
Greendyke, Julie Harrison, and I'd like to introduce my
litigation partner Shea Haass from Norton, Rose, Fulbright on
behalf of the debtor.

THE COURT: Okay. Can you spell your name for
me, sir.

MR. HAASS: Yes, ma'am. First name is Shea,
S-h-e-a, last name is Haass, H-a-a-s-s.

THE COURT: Okay. Two s's. I would have
gotten that wrong.

MR. LIPPMAN: Good afternoon, Your Honor.
Kevin Lippman and my colleague Joseph Wielebinski here with
Munsch, Hardt, Kopf & Harr, proposed counsel for the
Committee.

THE COURT: Okay. We have lots of experience
spelling Wielebinski, so I don't need you to spell that one
for me today.

MR. SHERMAN: Good afternoon, Your Honor.
Andrew Sherman with the law firm of Sills, Cummis & Gross.
We've been admitted pro hac vice, Your Honor.

1 MS. KLEIN: Good afternoon, Your Honor. Buffy
2 Klein with Hush Blackwell on behalf of UHS (indecipherable
3 word).

4 MR. GREENDYKE: And, Judge, this is Bill
5 Greendyke again. I think the Texas AG is on the phone. I
6 think you may have already heard that.

7 THE COURT: Do we have telephonic appearances?

8 MR. ROY: Yes. Good afternoon, Your Honor.
9 This is Casey Roy with the Texas Attorney General's Office.
10 I also have with me my colleague Chris Dvorak, D-v-o-r-a-k,
11 with our office's public finance division.

12 THE COURT: All right. Any other appearance?

13 MR. BUTLER: Yes, Your Honor. Lynn Butler on
14 behalf of UHS on the phone.

15 THE COURT: Okay. Now, is Mr. Hal Morris also
16 going to appear?

17 MR. ROY: No, Your Honor. Mr. Morris is not
18 going to be appearing. I was scheduled to be traveling to
19 another hearing at this time, but that matter settled, so I'm
20 appearing on behalf of the AG.

21 THE COURT: Okay. I just wanted to make sure
22 we weren't expecting another appearance.

23 MR. ROY: Sure. Thank you, Your Honor.

24 THE COURT: So your application -- do we need
25 to take up the motion to strike the issue of calling

1 Mr. Greendyke?

2 MR. LIPPMAN: Your Honor, I believe we have a
3 resolution of that.

4 THE COURT: We do, good.

5 MR. LIPPMAN: Just try to make things a little
6 more simpler for the Court.

7 THE COURT: Okay.

8 MR. LIPPMAN: The parties have agreed that we
9 will not be calling as witnesses either Mr. Greendyke or
10 Mr. Mann. In exchange, the debtor has agreed to the
11 admissibility of Committee Exhibits 3 to 6 for this hearing.

12 THE COURT: Okay.

13 MR. LIPPMAN: And I have a copy of our exhibit
14 binder, if the Court would like me to tender it.

15 THE COURT: Yeah. I don't have those
16 exhibits. So if you'll approach with the documents.

17 All right. Just so you all know, I don't usually bring
18 my phone into the courtroom, but I keep my code on here and
19 it has links so it's faster for me. So that's why I have it
20 here with me, okay.

21 All right. So Exhibits 1 through 6, you said, are
22 being admitted by agreement?

23 MR. LIPPMAN: The agreement is specific as to
24 Exhibits 3 through 6, Your Honor. Exhibits 1, 2, 7, and 8 we
25 can address in due course, unless counsel wants to --

1 THE COURT: Okay. So Exhibits 3 through 6
2 will be admitted by agreement of the parties.

3 MR. LIPPMAN: That's correct.

4 THE COURT: All right. Any other preliminary
5 announcements to make, housekeeping?

6 MR. LIPPMAN: The first two exhibits, Your
7 Honor, by the way, I guess we can address as a housekeeping
8 matter, are pleadings filed of record. Exhibit Number 1 is
9 the petition and Exhibit Number 2 is the declaration filed in
10 support of the Chapter 9 filing and the first day motions.
11 We believe that's stuff the Court could take judicial notice
12 of. And we would ask for the admission of those two
13 documents.

14 MR. GREENDYKE: We have no objection to the
15 admission of 1 and 2.

16 THE COURT: All right. Exhibits 1 and 2 are
17 admitted.

18 MR. LIPPMAN: And with respect of 7 and 8,
19 those are communications between the parties. It may be best
20 left as we come to them in our presentation. We may or may
21 not ask the Court to admit them into the record. But we can
22 address those in due course.

23 THE COURT: All right. You may proceed.

24 MR. LIPPMAN: Thank you, Your Honor. Again,
25 Kevin Lippman here on behalf of the law firm of Munsch Hardt

1 Kopf & Harr.

2 If it's okay with the Court, my recommendation is that
3 we take up the two applications together, because the
4 objections are applicable to both. And by way of just sort
5 of procedural background, the application seeking authorizing
6 to employ Munsch, Hardt, Kopf & Harr is at docket number 62.
7 And then the application to retain and employ Sills, Cummis &
8 Gross, PC as attorneys of the Official Committee of Unsecured
9 Creditors is at docket number 63. Docket number 64 is the
10 certificate of service of the application. We have limited
11 objection that was filed to it and that was by the debtor at
12 docket number 85. Then, in addition, the Texas Attorney
13 General's Office filed a limited objection, basically more of
14 a joinder to the debtor's objection at docket number 87. And
15 then yesterday UHS of Delaware filed a joinder to the
16 debtor's objection, as well, and that's at docket number 95.

17 Your Honor, with respect to the two applications. As
18 we understand the objection, there is no objection to the
19 qualification or specifically to the retention of either firm
20 by the Committee. Just for the Court to be aware with
21 respect to the two law firms, Sills, Cummis & Gross has very
22 extensive knowledge in Chapter 9s, as well as health care
23 restructurings. Munsch Hardt, admittedly, doesn't have much
24 Chapter 9 experience, but we do have health care experience,
25 as well as familiarity with the Court and are local. And

1 it's the reason for the two firms.

2 With respect to the two asserted objections, as we
3 understand it, The first is that the Court lacks authority to
4 require the debtor pay the fees and expenses of the
5 Committee's professionals. And then secondly, assuming it
6 does have the authority, the alternative objection is the
7 Court should apply an equitable approach to require the
8 members of the Committee to pay the fees and expenses of its
9 own professionals.

10 If it's satisfactory to the Court, I'll address the
11 first objection and Mr. Sherman will be addressing the
12 equitable second objection.

13 As to the authority to pay, Your Honor. We believe
14 that a standard provision in just about every order approving
15 the employment of an estate professional includes a statement
16 that the fees and expenses of the professional would be
17 subject to Section 330 of the Bankruptcy Court, as well as
18 any applicable local rules. This is an important issue in
19 this case. Because unlike your typical case, we're getting
20 hit up front that the debtor should not be required -- the
21 Court doesn't have the ability to order the debtor to pay
22 such fees.

23 THE COURT: Okay. Isn't 330 specifically
24 excluded from the applicable section to a Chapter 9 case?

25 MR. LIPPMAN: Your Honor, 330 is not in the

1 list under 901 of the statutory provisions. But that doesn't
2 mean it's specifically excluded.

3 THE COURT: Okay. What does it mean? How do
4 we apply 330, if it's not included in the list of statutes
5 that apply?

6 MR. LIPPMAN: Your Honor, what it requires is
7 a reading of the statute holistically.

8 THE COURT: Okay.

9 MR. LIPPMAN: And you get there by starting
10 off with Section 901, as the Court is already referencing,
11 which incorporates into that provision specifically sections
12 503, 507(a)(2), 1102, and 1103.

13 THE COURT: Okay.

14 MR. LIPPMAN: And as the Court is aware, 1102
15 is the section which authorizes the United States Trustee to
16 appoint a Committee in the case. So the UST has the
17 authority to put a Committee at the Chapter 9 case. 1103 is
18 the provision which sets forth the powers and the duties of
19 the Committee, which specifically includes the power to
20 employ counsel.

21 Now, if you jump to Section 943(b)(5) of the Bankruptcy
22 Code, that governs confirmation of the debtor's plan of
23 adjustment. And it provides the mechanism by which
24 professionals are paid in a Chapter 9 bankruptcy case.
25 Specifically, 943(b)(5) states that on the effective date of

1 the plan, each holder of a claim of a kind specified in
2 Section 507(a)(2) of this title, will receive on account of
3 such claim cash equal to the allowed amount of such claim.
4 If you follow that to 507(a)(2), that is a provision that
5 states that administrative expenses allowed under
6 Section 503(b) of the title shall have the second level of
7 priority, when it comes to distribution. When you follow it
8 to 503(b), it provides that there shall be allowed
9 administrative expenses, including the compensation and
10 reimbursements ordered under Section 330(a) of the title. It
11 is that symmetry, Your Honor, that completes the inclusion of
12 Section 330 into Chapter 9.

13 This is not a unique issue. It has been addressed by
14 three published opinions by Bankruptcy Courts. And those
15 opinions, each of the Court conclude that it had the
16 authority to require, as part of a plan of adjustment, the
17 payment of the Committee's professional fees. Those cases
18 are cited in our omnibus response to the objection. And they
19 are In re Castle Pines, North Metropolitan District. It's a
20 Bankruptcy Court out of the District of Colorado, 1991. The
21 second one is the County of Orange. It's a Bankruptcy Court
22 decision out of the Central District of California, 1995.
23 And the last, and it's the most recent Court to address the
24 issue, is In re Paul's Valley Hospital Authority, Bankruptcy
25 Court Western District of Oklahoma, 2013.

1 And if the Court would like, I do have copies of the
2 three opinions I can tender up.

3 THE COURT: I think I have them. Thank you.

4 MR. LIPPMAN: All right. Thank you, Your
5 Honor.

6 Additionally, Your Honor, one of the issues that has
7 been raised by the debtor is does such a requirement of
8 paying the Committee's professionals somehow violate the 10th
9 Amendment of the United States Constitution. Each of those
10 cases did address that issue. And they analyzed the
11 applicable statutes included that the Bankruptcy Court does
12 have the authority to require payment of the Committee's
13 professional fees in Chapter 9. The debtor in this case, as
14 in those other cases, voluntarily sought the jurisdiction of
15 this Court, because it could not obtain something that it can
16 obtain elsewhere. Specifically, the ability to impair
17 contracts. That right does not exist outside of bankruptcy
18 court.

19 In fact, the debtor has already filed in this case its
20 first omnibus motion to authorize and to reject certain
21 contracts. And that's at docket number 89. As noted in
22 Castle Pines and in the County of Orange, as well as Paul's
23 Valley, in fact, if the debtor is going to invoke the power
24 of this court, it must pay the price of admission, which
25 includes, in part, paying the reasonable fees and expenses of

1 the Committee's professionals. If the debtor doesn't want to
2 pay these administrative expenses, it does have a remedy
3 available to it. It can simply dismiss the case at any time.
4 As noted in Castle Pines, counsel understood the hierarchy it
5 created.

6 In Rawlins versus California Men's Colony, which is a
7 United States Supreme Court case at 506 US 1994, the Supreme
8 Court stated that Courts, when viewing the acts of Congress,
9 must avoid a statutory construction that leads to observe
10 results. Here, Your Honor, we would state that the debtor's
11 statutory argument would do just that.

12 As noted by the 5th Circuit in In re Advisory Committee
13 a Major Funding Corp, located at 109 F.2d 219, 1997, the
14 function of the Committee is to act as a watch dog on behalf
15 of the larger body of creditors which it represents. In
16 order to fulfill its overriding duty of protecting the
17 creditors' interest, the Committee is obligated to employ the
18 powers granted to it under Section 1103, which includes the
19 power to retain counsel. By seeking to deny the ability of
20 the Committee's professionals to be paid under Section 330,
21 the debtors are trying to marginalize, if not eliminate, the
22 Committee in this case.

23 Your Honor, we would assert that this is a legal issue,
24 which is now ripe for determination. First, counsel for the
25 Committee needs to know if they have even the legal ability

1 to be paid under Section 330, which normally is not disputed
2 at the time of retention of Committee counsel. The debtor
3 teed up this legal issue in connection with this objection to
4 the retention application. How the Court addresses the
5 issue, quite frankly, will impact whether or not counsel goes
6 forward with this representation and how involved the
7 Committee can and will be in this case.

8 Secondly, we believe this is an answer the debtor needs
9 to know. In order for the debtor to confirm its plan of
10 adjustment, it must pay all allowed administrative claims in
11 full on the plan's effective date. The debtor will not be
12 able to do that, unless it knows at the time its formulating
13 its plan, what those administrative claims are. The amount
14 of the Committee's professional fees is obviously something
15 the debtor will need to know in connection with the
16 formulation of its plan.

17 With that, Your Honor, we'll turn to the equitable
18 argument, which the debtor has presented to this Court.

19 MR. SHERMAN: Good afternoon, Your Honor. For
20 the record, Andrews Sherman, Sills Cummis firm.

21 Your Honor, I think, as Mr. Lippman outlined, I'm not
22 even sure you need to get to the equitable aspect of this
23 decision, because it's purely a legal conclusion as you
24 relate to the symmetry as it gets through 943. And I think,
25 Your Honor, just so that it's clear, just to modify or to

1 build on something Mr. Lippman said, we're not saying to the
2 Court that we're asking for an order compelling payment
3 outside of a plan of adjustment. I think, Your Honor, what
4 we're saying is that the fees and expenses to be accrued
5 shall be paid pursuant to a plan of adjustment such that
6 we're not going to ask the Court --

7 THE COURT: I thought you were asking for
8 interim fees? Are you limiting your request for fees only
9 to --

10 MR. SHERMAN: Correct, Your Honor. I think
11 that's probably the better view of where things are going,
12 Your Honor. And I don't want to be so bold to say that
13 throughout the pendency of the case, consistent with 903 and
14 904, that the Committee can obligate the debtor to pay
15 outside a plan of adjustment. As Mr. Lippman said, the three
16 cases where they land and where they case law really is and
17 where Congress said it was, just to be consistent with the
18 10th Amendment.

19 So, Your Honor, to be clear as far as how we're going
20 to get paid, the fees and expenses are to be accrued. But I
21 think the -- we wouldn't be so bold, Your Honor, to ask Your
22 Honor to go outside the existing case law. So if that clears
23 it up, Your Honor, I'd just like to make the record clear as
24 far as that aspect.

25 So within that legal construct, Your Honor, as Mr.

1 Lippman outlined, there's no equitable aspect to sort of move
2 the playing field of whether Committee counsel should --
3 Committee should be entitled to employ counsel. It's
4 statutory. It's 1102 and 1103 are baked into 901. And
5 obviously, as Mr. Lippman said, to avoid the absurdity of
6 having those provisions in there. But I don't want to
7 duplicate what he said. I want to sort of get to more of the
8 equitable and the need in this case. But I don't want to
9 compromise or to lend credence to the fact that there's some
10 type of equitable angle where a Court will have discretion.
11 We believe straight statutory interpretation doesn't allow
12 even equities to get in the middle of it. So with that
13 disclaimer, Your Honor, in many respects, this case cries out
14 for a Committee.

15 As we heard from the debtor in its statements to this
16 Court that it intends to pay 100 cents. And that's great.
17 And we embrace that on behalf of the creditors. And have
18 done everything that we can in our short tenure in this case
19 to work with the debtor to achieve that result.
20 Unfortunately to date our efforts have been rebuked. But
21 despite such rebuke, Your Honor, we've continued to do our
22 work and our diligence. And our work and our diligence to
23 date has uncovered a few things. One is, we uncovered a
24 number of issues relating to the DIP financing which we were
25 in a unique position to speak on behalf of the creditors to

1 get those provisions worked through. And that happened on a
2 consensual basis and the Court approved such DIP financing.

3 The other thing, Your Honor, as we were doing our
4 diligence is we uncovered an apparent conflict of interest
5 that obviously wouldn't come through if you didn't have
6 Committee counsel in this case. And we disclosed, or we
7 uncovered, however you want to put it, the relationship
8 between the Norton Rose firm and UHS. And we brought that to
9 the Court's attention, as we believe it's our statutory duty
10 to advise the Court in that watch dog capacity. Sort of
11 consistent with the 5th Circuit major funding type of
12 obligations.

13 THE COURT: Okay. Given that 327, 328, 329,
14 330 don't apply in a Chapter 9 case, at least not -- you may
15 have an argument with 330 that the other three provisions --

16 MR. SHERMAN: Correct, Your Honor. The Texas
17 Rules of Responsibility do.

18 THE COURT: Okay. Okay. So the issue that
19 you're raising is one of Texas has the (inaudible word)
20 rules, not of disinterestedness.

21 MR. SHERMAN: Correct, Your Honor. Again, I
22 started, Your Honor, with my presentation. I didn't want to
23 be so bold to say that we're going to override or impute 903
24 and 904. And I will be consistent, Your Honor, and I will
25 not ask the Court to engraft 327, 328, 329, 101.31, I

1 believe, the disinterestedness section into the requirements.

2 THE COURT: Okay.

3 MR. SHERMAN: So it's simply, Your Honor, if
4 we're going to go down the road of looking at equities, we're
5 going to look at, who's looking out for the creditors? And
6 what we heard from the debtor's perspective, Your Honor is,
7 you don't have to look out for the creditors, because we're
8 going to pay 100 cents. And unfortunately, as Your Honor has
9 probably seen more than I, the best of intentions in this
10 courtroom do not always -- are not always achieved.

11 There are going to be a number of instances, just in
12 the nature of a bankruptcy case, which may take the debtor
13 off course a little bit. Hopefully they get to the 100
14 cents. But, for example, Your Honor, if there's a big
15 Medicare or Medicaid recoupment or set off. Which if this
16 comes in and no fault of anybody, but it just impairs the
17 cash flow, what happens? The DIP financing is then off
18 kilter. And then who's looking out for the creditors in that
19 respect? Take an example, Your Honor, where a competitor
20 comes in and says they want to pay 90 cents to creditors
21 today to take control of the Hospital District. Now, the
22 debtor may not be able to take that call. They have a
23 management agreement. And, again, the terms are not
24 disclosed to this Court. And we've been provided on
25 (indecipherable two words) basis that I'm not going to

1 disclose any terms to this Court. But what happens to the
2 Norton Rose lawyers that have that dual allegiance to the
3 manager and to the debtor. And who's looking out for the
4 creditors? Because maybe it's better for the creditors in
5 that instance to take 90 cents and go home and get done.
6 Rather than go down the road of working through a plan of
7 adjustment which will pay 100 cents, but maybe 18 months
8 later. What happens if there's a default in the management
9 agreement? What if there's a default under the DIP
10 financing? What happens if you have a very large rejection
11 damage claim? The debtor, as Mr. Lippman said, has already
12 exercised a right under 365. Well, what happens if you go
13 down the road of a rejection damage claim and it's 10 million
14 bucks, but the debtor didn't understand it was \$10 million.
15 You're only going to get to that rejection damage claim
16 through 502. It went through the rejection process. And
17 that's going to then say, Wait a minute. Instead of that
18 great 100 cent case, it may be an 80 cent case. It may be a
19 70 cent case. We don't know where it's going to come out.
20 Who is looking out for the creditors as we go down this road?
21 So it's just not something that at the beginning of the
22 case you can say, Well, no, you creditors, you don't need
23 representation. Creditor's Committee's, by their nature Your
24 Honor, were put in by Congress for a reason. To look out for
25 the interest of creditors. The debtor gets a lawyer. UHS

1 has a lawyer. Apparently the AG is now involved in the case.
2 They have counsel. It would be really strange to progress
3 with this case, Your Honor, with all these various --

4 THE COURT: Okay. I though this issue wasn't
5 about whether you could have counsel, because the AG has
6 counsel, but this estate is not paying for it.

7 MR. SHERMAN: Perfect --

8 THE COURT: The issue is, who pays for it?

9 MR. SHERMAN: But, Your Honor, the two go hand
10 in hand. And you can almost use the Prichard case as an
11 example. If counsel is not entitled to be paid, most law
12 firms, I haven't discussed it with my own firm and with the
13 Munsch firm of whether we're going to work pro bono, because
14 effectively that's what you're saying. Not you personally,
15 Your Honor. That would be the affect of a decision where
16 there's no payment would be, who's paying the bill for whose
17 benefit? It's really for all creditors, Your Honor.

18 So just take the example that I've given, whether it's
19 the conflict we've identified, the DIP financing. That
20 benefit is inured to the creditors in general. But no
21 individual creditor should bear that expense. As the Castle
22 Pines' decision said, Your Honor, it's the price of admission
23 to Chapter 9. It's simply a risk and a burden that goes with
24 the process of Chapter 9. So, again, I don't think it's
25 discretionary, Your Honor. I think, like Congress putting in

1 1102 and 1103, it's there. So it's -- but the affect of it,
2 Your Honor, let's just play the string out in the City of
3 Pritchard, it was raised by the debtor. What happened in
4 that case, Your Honor, is the Alabama Bankruptcy Court said
5 no to the Committee for reimbursement. They first went to
6 the District Court to appeal. And the District Court said,
7 Well, it's interlocutory, so I'm not going to give you a
8 decision. So what did counsel do? They folded tent, Your
9 Honor. They disbanded. Nobody looked out for the creditors.
10 That's a bad result. In that instance, Your Honor, the
11 creditors lost, because the bankruptcy judge said, We're not
12 going to follow what Congress said. You've effectively
13 disenfranchised and taken counsel away from a significant
14 constituency. And in this constituency, Your Honor, we're
15 not talking about \$3 million, as the debtor says. It's \$30
16 million. What happens if the bonds go -- if there's an issue
17 with the bonds? They're ultimately insured by Amback. But
18 if the debtor has a payment default because of Medicare
19 setoff, a Medicare recoupment, it impairs their cash flow.
20 Then Amback comes in here. And lo and behold, Your Honor,
21 Amback is going to have their own lawyer. So, again, each
22 constituent party will have counsel and an ability of being
23 paid.

24 I think it would be sort of antithetical to Congress'
25 interest to say we're going to mandate under 1102 and 1103

1 and a Committee can be there and then honor the 5th Circuit's
2 teachings in major funding. And then ultimately take payment
3 away. The concepts work hand in hand.

4 As far as -- I guess the last point on equities, Your
5 Honor, is our approach to this case, sort as we approach most
6 hospital cases, has been to approach the debtor in good faith
7 to try to work together to get to 100 cent plan, if that's
8 the goal in this case, as I said in the inception. It's not
9 the goal to rack up legal fees in an effort to do anything
10 but, you know, inure to the benefits of the specific law
11 firms. We've been doing it too long. We've been doing it in
12 too many hospital cases with these similar creditors. So
13 this is something where we're simply looking out for the
14 interest of our constituency.

15 So, Your Honor, it is not nefarious in any respect.
16 We're simply honoring Congressional intent.

17 THE COURT: Thank you.

18 Okay, Mr. Greendyke.

19 MR. GREENDYKE: Thank you, Judge. May it
20 please the Court. On behalf of the debtor.

21 Judge, I know the Court has read the pleadings and
22 understands the law and obviously has been asking some very
23 pertinent questions of counsel. I start from the top. We
24 begin with Section 904 of the Code and Section 901 of the
25 Code. 904, as we've discussed before in prior hearings,

1 states the Court may not by any stay order, or to create in a
2 case, or otherwise interfere with the (indecipherable word)
3 or governmental powers of the debtor, or any property or
4 revenues of the debtor. In my mind, in Cowboy English that
5 basically means, we get to run our business the way we want
6 to run our business. The question that we've alluded to and
7 focused on in our pleadings with regard to this application
8 and the limited objection to the application, I think my
9 colleague's counsel for UHS and colleagues counsel for the
10 Texas AG all focus on this promise of this case is for 100
11 cents on the dollar. And what are these folks going to do to
12 benefit, you know, that progress? Could something go wrong
13 as Mr. Sherman says? Yes. Something could go wrong. And at
14 that instance, maybe they would have an opportunity to show
15 some benefit. But the idea of having somebody involved as a
16 part of our budget, as a part of our end-game budget under
17 943, if you will, if that's the law, I think is something
18 that my client is just not convinced is appropriate, or fair,
19 or something under the circumstances of this case, the really
20 kind of short-stream budget that we have in the game plan is
21 something that we need to underwrite and we need to take on
22 and sign a blank check for. And that's the primary purpose
23 of the objection.

24 THE COURT: Okay. Can I -- I want to clarify
25 your position, if I may.

1 First, as I understand it, you object to any payment
2 ever to the Committee; is that correct, Committee counsel?

3 MR. GREENDYKE: Yes, Judge.

4 THE COURT: Okay. And then your alternative
5 is --

6 MR. GREENDYKE: As he mentioned -- and,
7 frankly, it's the first time I heard this position was today
8 on the record where they said, you know, we'll not worry
9 about interim payments. We'll just look to the end game.

10 THE COURT: Right. 943, right?

11 MR. GREENDYKE: Correct.

12 THE COURT: So is it your position that -- and
13 that's your back-up position if the Court concludes they're
14 entitled to payment, they're only entitled to payment --

15 MR. GREENDYKE: Yes, Judge.

16 THE COURT: -- under 943?

17 MR. GREENDYKE: Yes, Judge.

18 THE COURT: Not on an interim basis?

19 MR. GREENDYKE: I still think that 904 trumps
20 everything. And I still think that the argument --

21 THE COURT: It even trumps 943?

22 MR. GREENDYKE: To the extent that those fees
23 are incurred and charged, yes. I don't know --

24 THE COURT: Okay. Can I ever confirm a plan
25 under those circumstances? I guess I'm trying to -- if 943,

1 if the Court concludes that 943 requires a payment of
2 Committee expenses, because it requires a payment of
3 expenses, that may affect your budget, the Court can't ever
4 confirm a plan unless you consent?

5 MR. GREENDYKE: Or unless we make an agreement
6 with them.

7 THE COURT: Right.

8 MR. GREENDYKE: Obviously we're going to do
9 what the Court tells us to do, Judge, in this regard. But I
10 think running our business is something the Court cannot
11 interfere with, again, using the Cowboy English for 904.

12 THE COURT: You're in the Eastern District.
13 We take Cowboy English, thank you very much.

14 MR. GREENDYKE: I disagree with the symmetry
15 argument. And I disagree with the implication argument. I
16 think it's pretty clear to look at what is incorporated under
17 the Code, under 901. So when the Court said 327 is not
18 there, 328 is not there, 329, 330, 331, they're all gone --

19 THE COURT: Okay. Here's my question to you.

20 MR. GREENDYKE: Okay.

21 THE COURT: 901 does incorporate 1102 --

22 MR. GREENDYKE: And 1103.

23 THE COURT: -- and 1103, right?

24 MR. GREENDYKE: Yes, Your Honor.

25 THE COURT: 1102 requires that appointment of

1 a Committee, doesn't it?

2 MR. GREENDYKE: Well --

3 THE COURT: It says, shall.

4 MR. GREENDYKE: -- it does. It does require.

5 And we were not asked if we thought that was a good idea by
6 the US Trustee. He appointed --

7 THE COURT: Well, Congress didn't ask us at
8 all. It just says, US Trustee shall.

9 MR. GREENDYKE: Interestingly, the Trustee
10 appointed the Committee 30 days before the entry of the order
11 for relief. Because 1102 specifically says you can't do it
12 until you have the entry of an order for relief, just as sort
13 of a side bar comment.

14 THE COURT: Okay.

15 MR. GREENDYKE: But, yes, 1102 is there and
16 1103 is there. I don't dispute that.

17 THE COURT: Okay. So here's my question to
18 you. 503 does not have an exhaustive list of administrative
19 priorities. It has an inclusive list, right? It says, All
20 expenses that are actual and necessary to the preservation of
21 the estate, including and it lists some stuff, right?

22 MR. GREENDYKE: There's no estate.

23 THE COURT: Huh?

24 MR. GREENDYKE: There's no estate.

25 THE COURT: There's no what?

1 MR. GREENDYKE: Estate. In a Chapter 9 case,
2 there's no estate. If you look at 901, there's no 541.

3 THE COURT: Okay. So there's no actual,
4 necessary cost and expense of preserving the estate, because
5 there is no estate at all?

6 MR. GREENDYKE: That's the law. That's the
7 law. And I know the implication or symmetry argument is
8 going to get me to a different place. But there is no estate
9 in Chapter 9, because it's all governmental property.

10 THE COURT: Okay. So notwithstanding the
11 fact -- so your argument is, the Court should read 503 to
12 prohibit the Court from authorizing, not just authorizing,
13 but that the debtor is not obligated to pay the fees for the
14 Committee, notwithstanding the fact that by filing the
15 bankruptcy case, the debtor has triggered the application of
16 1102 and 1103, which requires the formation of a Committee?

17 MR. GREENDYKE: I think that's correct, Judge.
18 That's our argument. I think -- and I know it's a difficult
19 decision and it's completely different than anything you
20 would see in a Chapter 11 case. But in this instance, like
21 we said in our objection, our limited objection, I don't
22 really have an objection to somebody at some point for an Ad
23 Hoc Committee or otherwise showing me -- arguing to the Court
24 what a substantial contribution is, or how they benefited
25 things. But, frankly, uncovering every stone and having a

1 blank check to do whatever they want to do as a Committee,
2 like you would see in many Chapter 11 cases is I don't think
3 what we need from public policy, from the statutory
4 standpoint. I mean, everybody else in the case who has
5 appeared on this in any kind of significant way has said,
6 Whoa, don't do this. It's going to be costly.

7 THE COURT: Are any of those anybody else
8 general unsecured creditors?

9 MR. GREENDYKE: No.

10 Judge, I think it's interesting. And I'm not trying to
11 ignore your questions. But it's interesting that the Chapter
12 9 has been around since the late '80s and there's only been
13 about 250 cases. And there's just a handful of cases that
14 touch on this issue. And, frankly, most of them have been
15 settled, not appealed. We don't have any Circuit authority
16 on this. I think it's -- the Court's being confronted with a
17 really kind of a bedrock issue that needs to be addressed at
18 some point.

19 THE COURT: Okay. So, so far I've got the
20 argument that 330 is not incorporated under 901. Is there
21 any other argument that I'm missing from you all on why --

22 MR. GREENDYKE: No. 331 is not incorporated
23 either. And that would be interim compensation, even though
24 that, too, alludes to 1103. Again, I see the symmetry. I
25 see the circular arguments and all. I keep going back to

1 square 1, which is 901 and then 904, square 2.

2 And, Judge, I wanted to leave myself if the Court has
3 any questions about the potential conflict question that's
4 been raised. I know I came prepared to discuss that.

5 THE COURT: Okay. I am not concerned about
6 that at this point in time.

7 MR. GREENDYKE: Thank you.

8 THE COURT: I think if someone wishes to file
9 a disqualification motion, if they believe one is warranted,
10 we'll take that up in that context. But since nothing has
11 been filed and I did clarify and I wanted to clarify the
12 Texas Ethical Rules versus the Bankruptcy disinterestedness
13 test, and I think that at least the proposed counsel has
14 clarified that. And if it's just -- I don't mean to say,
15 just, but if it's limited to the Texas Ethical Rules, then
16 they need to file their motion and we'll take it up if and
17 when we need to. I'm quite familiar with the plethora of
18 cases. In fact, have participated as counsel in a plethora
19 of cases where there are multiple disclosures on
20 disinterestedness on --

21 MR. GREENDYKE: And that's not necessary here.
22 As the Court's obviously stated, from a Texas Ethical
23 standpoint, you know, that seems to be an attorney/client
24 matter. And I can represent to the Court now that our client
25 is totally fine with all this. All that's been taken care

1 of.

2 Judge, we have a number of counsel that are working for
3 the Hospital District. We have the Reed, Claymon, Meeker &
4 Hargett firm in Austin who is health care counsel dealing
5 directly with UHS. We have a public finance advisor at
6 Hilltop Securities in Dallas. We have the McCall, Parkers &
7 Horton firm in Dallas that's doing municipal bond work along
8 with some of the Norton Rose people. None of those folks
9 have filed applications. None of those folks have made any
10 disclosures. The client is aware of all of the relationships
11 back and forth and is fine with that. And I was going to say
12 to you, if you need anything further from the client, let us
13 know.

14 THE COURT: Right. I think it's an issue of
15 disclosure. And the ethical rules, I think, even if these
16 are the facts, as alleged, it becomes an issue of disclosure
17 to your client, not to the estate. And so I --

18 MR. GREENDYKE: We agree.

19 THE COURT: -- I'm aware of that. And so
20 that's why I'm saying that if there's a disqualification
21 motion because there's a problem that the Court's not aware
22 of, file it and we'll hear it. But I'm not going to do it in
23 the context of some sort of response to a reply to a response
24 of something else.

25 MR. GREENDYKE: Understood.

1 THE COURT: We're not taking it up in that
2 context.

3 MR. GREENDYKE: Thank you.

4 THE COURT: All right. I have been wringing
5 my hands over this decision on this issue. And I think that
6 there are certainly plausible, colorable arguments on both
7 sides. But I think given that 1102 and 1103 are applicable
8 in Chapter 9 cases, given that 1102 requires the appointment
9 of a Committee, I think the better reading -- I think there
10 was an argument about holistic reading of Section 503 and 901
11 making 507 and therefore 503 applicable. A better reading of
12 the statute is that -- or the statutes together is that the
13 Committee counsel fees may be payable in a Chapter 9 case,
14 but only upon confirmation -- as a condition to confirmation
15 under 943. No interim payments is the way I read it.

16 So given that there's no objection to the Retention
17 Committee, I'm going to authorize the retention of the
18 Committee's counsel. And no payments on an interim basis.
19 If there are further arguments about plan confirmation
20 payments in that context, we'll take it up then. But there
21 will be no interim distributions. Okay?

22 MR. GREENDYKE: Understood, Judge. Thank you.

23 THE COURT: All right.

24 MR. LIPPMAN: Just to clarify, Your Honor.
25 When we get to the plan of adjustments, when you talk about

1 the analysis, you're talking about under 330 for the
2 Committee's professionals at that point, standard review?

3 THE COURT: Well, those are part of the issues
4 that you all will have to argue. I think there's arguments
5 about whether reasonable standard under 330 applies. I'm not
6 sure if it makes a hill of beans of difference. I always
7 kind of wondered that. Because under our ethical rules,
8 well, lawyers, as lawyers, you're obligated not to charge
9 unreasonable fees, I think. I think that's one of the rules.
10 I think it's still a case. So I've never understood that
11 there's a difference. But we will take up the issue of the
12 obligation to pay on a final basis at that time. But right
13 now, I'm not authorizing the payments on an interim basis.

14 MR. GREENDYKE: We understand.

15 Judge, if the Court has a few minutes and counsel has a
16 few minutes, I'd like to bring you up to speed on something
17 that will probably happen within the next few days.

18 THE COURT: Yes, sir.

19 MR. GREENDYKE: Just so you're not surprised
20 by it. We have been advised by our public finance counsel
21 that when the management agreement that's been alluded to in
22 some of these pleadings, was entered into by the debtor and
23 UHS a couple of days after we filed the Chapter 9, at some
24 point they became aware that it triggered an IRS provision --
25 and I'm not a tax lawyer -- that renders within 90 days the

1 tax free bonds that are -- or, you know, the tax free
2 municipal bonds that are outstanding in the name of the
3 debtor pre-petition to become taxable. And that, apparently,
4 is something that, you know, happens with enough frequency
5 that they know how to deal with it. But there will be a
6 renewed issuance of bonds on a taxable basis, basically to
7 pay off the tax free bonds. And I hope I'm saying this the
8 right way. But what you're going to see is, soon, a filing
9 of a stipulation between UHS and the AG's Office and the
10 debtor enabling this process to occur under Texas State Law.
11 And we've been talking with the bond counsel about it, we've
12 been talking with the AG about it. They've expected me to
13 say this. Obviously UHS is aware of it. We just didn't want
14 you to be surprised by, Gee, what's this, because you will
15 never have seen anything like this, probably, before. And
16 hopefully will never see it again. But it is a work out to
17 make sure that there's no harm done to those pre-petition
18 creditors. It's just a change of character of the bond. And
19 we'll explain that to you, if you want to have a hearing to
20 discuss it, if you don't understand what we file with you.
21 Just wanted to give you a heads up you're going to see an
22 unordinary pleading get filed.

23 The key is, we would like to get it addressed and
24 hopefully entered by the Court, because it's going to be an
25 agreed stipulation by the parties promptly, very promptly,

1 because we need to get things done by the middle to end of
2 April.

3 THE COURT: Okay. So is this something that's
4 going to require notice?

5 MR. GREENDYKE: You know, again, I don't think
6 so. It's not a DIP loan. We're not having a new lender or
7 anything like that. I think it is a stipulation between the
8 parties that would enable us to do what we'd be entitled to
9 do under 904.

10 THE COURT: Okay. And the Court would have to
11 bless it in some way, you're saying?

12 MR. GREENDYKE: Well, I think the parties
13 would feel more comfortable with the character of the new
14 bond if the Court entered the stipulation, as opposed to was
15 just aware of it as a notice.

16 THE COURT: Okay.

17 MR. GREENDYKE: But like I say, we can do
18 whatever you want.

19 THE COURT: I would prefer that we at least
20 set -- schedule a hearing on that.

21 MR. GREENDYKE: Sure.

22 THE COURT: So that if I have questions, I can
23 ask questions.

24 MR. GREENDYKE: Absolutely. Absolutely.

25 THE COURT: If the Court is going to bless

1 something, I think we need something -- due process requires
2 something more than just the Court unilaterally signing
3 something because you filed it, right? So what I would like
4 you to do after we adjourn is for you all to get with
5 Ms. Rasco and look at sort of the calendar of dates so that
6 she can give you ahead of time a date and time that fits
7 within the time line that you all need.

8 MR. GREENDYKE: Right.

9 THE COURT: And then when you file the motion,
10 you can notice it out at the same time.

11 MR. GREENDYKE: Great. Great. Can we do that
12 telephonically? I'm not sure whether we have precise dates
13 for all of the calendars that are necessary to --

14 THE COURT: You can.

15 MR. GREENDYKE: Or by email.

16 THE COURT: The easier way to do it for
17 Ms. Rasco, and I'm sure she's turning around really quickly,
18 which is do it by email.

19 MR. GREENDYKE: Deal. Deal. Thank you.

20 THE COURT: So if you can give her kind of an
21 email with some of the possible dates or the range of dates
22 that you need the hearing by --

23 MR. GREENDYKE: Will do.

24 THE COURT: -- and then she can look for a
25 time.

1 MR. GREENDYKE: Great. Thank you, Judge.

2 THE COURT: All right. Is there anything
3 further?

4 All right. Thank you. Parties are excused and we
5 stand adjourned.

6 (End of Proceedings.)

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C E R T I F I C A T E

I, CINDY SUMNER, do hereby certify that the foregoing constitutes a full, true, and complete transcription of the proceedings as heretofore set forth in the above-captioned and numbered cause in typewriting before me.

/s/Cindy Sumner

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